

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

and

STATE OF MINNESOTA, by its
Attorney General Warren Spannaus,
its Department of Health, and its
Pollution Control Agency,

Civil No. 4-80-469

Plaintiff-Intervenor,

SUPPLEMENTAL AFFIDAVIT
OF DAVID J. GIESE

v.

REILLY TAR & CHEMICAL CORPORATION;
HOUSING AND REDEVELOPMENT AUTHORITY
OF ST. LOUIS PARK; OAK PARK VILLAGE
ASSOCIATES: RUSTIC OAKS CONDOMINIUM
INC.; and PHILIP'S INVESTMENT CO.,

Defendants.

and

CITY OF ST. LOUIS PARK,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant.

and

CITY OF HOPKINS,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant.

I, David J. Giese, being first duly sworn on oath, depose and
say that:

1. I am making this Supplemental Affidavit to address
certain events which occurred after my initial Affidavit of June
5, 1981.

2. In July of 1981, the Environmental Protection Agency
awarded the State of Minnesota two hundred thousand dollars
(\$200,000) in federal funds to accomplish two tasks; first, to
investigate the two deep wells on the former Reilly site and
develop specifications for clean-up of these wells, and second, to


conduct a survey of improperly abandoned multi-aquifer wells, that is, wells which are open to several aquifers and which may further the spread of contaminated groundwater by providing conduits for such water to flow from one aquifer to another. The award of the two hundred thousand dollars (\$200,000) requires the State of Minnesota to make a five percent match. Accordingly, the State is providing technical services valued at approximately ten thousand dollars (\$10,000). In September of 1981, the State of Minnesota received an additional two hundred thousand dollars (\$200,000) from the Environmental Protection Agency to conduct bench testing (laboratory studies) and pilot testing (field studies) and to develop specifications for the treatment of contaminated water from St. Louis Park Well No. 15. As before, the State is providing a five percent match of technical services. Beyond these tasks, there is a need for additional funds to actually clean out the two deep wells on the former Reilly site, to properly abandon the multi-aquifer wells identified in the course of the well survey, and to construct permanent facilities, if feasible, to treat water withdrawn from St. Louis Park Well No. 15. In addition, further investigatory and remedial measures will be necessary.

3. In August of 1981, St. Louis Park Well No. 5 was closed as high levels of noncarcinogenic PAH's were found. This well, located approximately one-half mile west of the former Reilly site, withdrew water from the Prairie du Chien-Jordan aquifer. The closing of St. Louis Park Well No. 5 has resulted in a loss of capacity of approximately 2.4 million gallons per day. The previous closing of five St. Louis Park wells due to the contamination of the Prairie du Chien-Jordan aquifer (Wells No. 4, No. 7, No. 9, No. 10 and No. 15), together with the recent closing of St. Louis Park Well No. 5, has resulted in an overall loss of capacity of approximately forty-five percent of the total design capacity for St. Louis Park. (The total design capacity of the 14 municipal wells in St. Louis Park is approximately 21 million

gallons per day.) A map entitled "City of St. Louis Park", attached as Exhibit No. 2 to my previous Affidavit dated June 5, 1981, shows the locations of municipal wells in St. Louis Park.

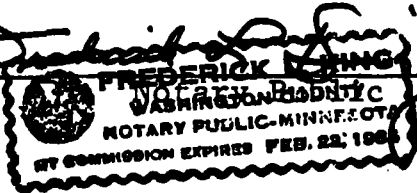
4. I have been made aware of the following statement recently made in a legal memorandum for Reilly Tar: "Two of the wells originally alleged to have been contaminated now have been recognized as free of contamination." (See Reply Memorandum of Reilly Tar and Chemical Corporation in Response to the Memoranda in Opposition of Plaintiff United States of America and Intervenor State of Minnesota, page 24 n. 17.) St. Louis Park Wells No. 7 and No. 9 were removed from service in 1978. Over the years, water analyses of each of these wells have established the presence of both carcinogenic and non-carcinogenic PAH's. (See paragraphs 10 and 11 of my initial Affidavit of June 5, 1981.) Samples of these wells were collected by the City of St. Louis Park in July of 1981. The Minnesota Department of Health analyzed a sample for St. Louis Park Well No. 7 and, following its established analytic procedures, established the presence of non-carcinogenic PAH's. It did not analyze any sample from Well No. 9 at that time. (The University of Iowa Hygienic Laboratory, at the request of the City of St. Louis Park, did analyses of water withdrawn from Wells No. 7 and No. 9. This laboratory, with less sensitive detection limits than those of the Minnesota Department of Health Laboratory, did not detect the presence of PAH's in these samples.) Since its closing in 1978, PAH contamination appears to have lessened in St. Louis Park Well No. 7. However, more heavily contaminated groundwater is likely to return rapidly to this well if normal pumping resumes. Any other closed wells would be similarly affected when pumped at normal levels. The past few years have demonstrated that contaminants migrate rapidly within the Prairie du Chien - Jordan aquifer in response to pumping stresses from high capacity wells. (See Groundwater Movement and the Continuing Threat to Public Water Supplies, paragraphs 22 through 25 of my initial Affidavit of June 5, 1981.) The position of the Minnesota Department of Health is

that wells which are not now in service may only return to temporary service under extenuating circumstances, for example, in the event water pressure becomes so reduced that foreign materials may back-siphon into the water supply system or fire fighting capacity is inadequate. The closing of St. Louis Park Well No. 5, and the overall loss of nearly half of the total design capacity for the City demonstrates that it is becoming increasingly difficult to provide a safe water supply to the residents of St. Louis Park.



DAVID J. GIESE

Subscribed and sworn to before me
this 21st day of December, 1981.



Congress Clears 'Superfund' Legislation

In the waning days of the session, the 96th Congress resurrected a near-dead, drastically scaled-down version of President Carter's 1979 proposal to establish a \$1.6 billion emergency "superfund" to clean up toxic contaminants spilled or dumped into the environment.

The House cleared the measure (HR 7020) Dec. 3, when it grudgingly adopted the Senate-passed version of the bill in a cliff-hanger 274-94 vote under suspension of the rules. A minimum of 246 votes was needed to pass the bill under suspension. (*Vote 587, p. 170-H*)

Neither environmentalists nor the chemical industry were entirely happy with the final bill. But the administration gave it reluctant support, and President Carter made several 11th-hour telephone calls to Capitol Hill urging House passage.

However, the final bill contained weaker liability provisions than he had wanted. It also did not cover oil spills, as Carter had proposed and as the House had done in its \$1.9 billion superfund package (HR 7020, HR 85).

Carter signed the measure (PL 96-510) Dec. 11 after pointing out that congressional leaders had promised to deal with oil spills in the 97th Congress.

The omission of oil spills had led several House sponsors to try to kill the bill at the last minute, but their efforts failed when most members agreed with proponents that something — no matter how flawed — was better than nothing.

As cleared, HR 7020 gave the federal government the authority and the money to act in emergencies to clean up spilled or dumped chemicals threatening public health or the environment. The government could then sue the persons or companies responsible for the damage — if they could be found — to recoup the cleanup costs.

The fund was to be created over five years, with \$1.38 billion coming from the chemical industry and oil companies that produced chemicals and the rest coming from general revenues.

The measure had been in the drafting stages for two Congresses. It was the congressional response to environmental disasters such as the 1977 discovery in Niagara Falls, N.Y., that the Love Canal subdivision had been built on top of a former chemical dump and that chemicals

leaking from the discarded drums were poisoning the residents.

However, the final bill did not allow the superfund to compensate victims injured by such chemical incidents. That controversial Senate Environment Committee provision was deleted before the measure ever reached the Senate floor.

Environmentalists immediately vowed to try again in the next Congress to get a bill to compensate victims of chemical disasters.

"We'll be back next year," said Blake Early, a Sierra Club lobbyist. Marchant Wentworth, a lobbyist for Environmental Action, said the Senate's refusal to compensate victims was "a tragic loss."

But Robert A. Roland, president of the Chemical Manufacturers Association (CMA), called the final Senate bill a "significant improvement" over both the administration proposal and the original Senate Environment Committee version of the bill (S 1480). He added that it established "unfortunate precedents, inflationary off-budget financing and unnecessary federal bureaucracy."

Resurrection

The Environment Committee version had appeared dead following the Nov. 4 Republican landslide when Republican leaders — who would be in control in the new Senate — said they wanted to wait until 1981 so the new administration could have a chance to review the proposal.

But President-elect Reagan indicated to Senate Minority Leader Howard H. Baker Jr., R-Tenn., that he would not object to the lame-duck Congress finishing up the controversial bill before he took office. Baker dropped his previous objections to bringing it up.

Sponsors still had to make major concessions to overcome the objections of other Senate Republicans who had threatened to filibuster the committee bill.

Thus the final measure contained only about 25 percent of the controversial Environment Committee proposal, according to Sen. Robert T. Stafford, R-Vt., who was expected to become chairman of the committee in the 97th Congress. Stafford had helped Committee Chair-

man Jennings Randolph, D-W. Va., resurrect the bill and craft a compromise version, which they called only a "first step" toward confronting the problem of proliferating toxic chemicals in the environment.

Stafford and Randolph had picked up the superfund reins from its original co-sponsors, Sens. Edmund S. Muskie, D-Maine, and John C. Culver, D-Iowa. Muskie had resigned from the Senate in May to become secretary of state, and Culver was defeated in his re-election bid in November.

Final Provisions

As cleared by Congress, HR 7020 contained the following major provisions:

The Fund

- Established a \$1.6 billion Hazardous Substance Response Trust Fund with \$1.38 billion (86 percent) coming from fees on the chemical and oil industries, and \$220 million (14 percent) coming from appropriations of general revenue in fiscal 1981-85.

- Provided that the fees would be collected on 45 specified substances, based initially on the amounts of them produced by an individual company and adjusted later to reflect the number of incidents in which the fund had to clean up particular substances.

- Provided that the fund could pay for the following losses resulting from hazardous chemical releases: 90 percent of the operation and maintenance costs of any remedial action taken at the release site (states would pay the other 10 percent); loss of natural resources and costs of restoring lost resources up to \$50 million; and costs of health studies and diagnostic examinations for victim health problems, but not other medical expenses.

Liability

- Imposed liability equivalent to that in the Clean Water Act (PL 92-500) for government cleanup costs and natural resource damages of up to \$50 million on anyone releasing hazardous substances into the environment.

- Provided that the only defenses to liability were an act of God, an act of war or the act of a third party.

- Exempted from the bill's liability regime releases that were in compliance with permits issued under the Clean Water Act, Solid Waste Disposal Act (PL 94-580), 1972 Marine Protection, Research, and Sanctuaries Act (PL 92-532), Safe Drinking Water Act (PL 93-523), the Clean Air Act (PL 95-95) and Atomic Energy Act of 1954 (PL 84-141).

Emergency Response

- Authorized the president to order a company to remove or control hazardous substances threatening the public health, welfare or environment.

- Authorized the president to order whatever emergency cleanup action he deemed necessary — by either the government or the responsible party — to protect the public whenever a pollutant was released or there was "the substantial threat" of such a release.

- Provided that government response could include cleanup and temporary or permanent provision of alternative water supplies and housing.

Scope

- Defined hazardous substances as any toxic substance identified under certain sections of the Clean Water Act, the Clean Air Act, the Solid Waste Disposal Act and the Toxic Substances Control Act (PL 94-469).

- Exempted spills or releases of petroleum, natural gas and synthetic fuels and their derivatives, unless identified in another act as hazardous.

- Authorized the president to designate as hazardous other substances that may present substantial danger to public health, welfare and the environment.

- Provided that the law applied to hazardous substance releases at disposal sites, facilities and vessels into the air, land, navigable waters, ground water or public water supplies.

- Defined "release" as "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching or dumping" into the environment, or any other release "which presents or may present" a substantial danger to the public.

- Exempted releases in the workplace, and releases of nuclear materials or byproducts, normal field applications of fertilizers and engine exhausts.

Legislative Veto

- Provided that, if within 60 days of promulgation of any agency regulation written to carry out the act, either the House or the Senate passed a resolution disapproving the regulation, or, if both houses adopted such a resolution within 90 days, the regulation would not become effective.

Penalties

- Required anyone in charge of a facility found to have released a hazardous substance to immediately notify the appropriate federal agency or face up to \$10,000 in fines.

- Required owners or operators of facilities where hazardous substances were stored or disposed of to notify the administrator of the appropriate government agency of the existence of the facility or site, and to specify the amount and type of hazardous substances there and any likely discharges from that facility. Provided that failure to comply could result in a fine of up to \$10,000 and/or imprisonment for up to one year.

- Prohibited the falsification or destruction of records relating to the location or contents of facilities containing hazardous substances. Failure to comply was punishable by a fine of up to \$20,000 and/or imprisonment for up to one year.

- Required that deeds for hazardous waste disposal sites disclose the location of toxic chemicals on the site. Provided that violators would be subject to a \$10,000 fine and/or up to a year in prison, and would be liable for damages resulting from releases.

Background

Since the 1977 discovery of Love Canal, dozens of other chemical wastelands had been discovered throughout the nation. Hardly a state was unscathed. But no one really knew how extensive the hazardous waste problem was.

The EPA estimated that 126 billion pounds of hazardous wastes would be produced in 1980, enough to fill the New Orleans Superdome from floor to ceiling every

day. Only 10 percent of that was expected to be disposed of properly, said the agency.

The House Commerce Subcommittee on Oversight and Investigations in a 1979 study found 3,383 chemical dump sites. Some were beneath tennis courts, a yacht club, church parking lots, a cemetery, a raceway, botanical gardens, nurseries and an old silo. About 80 were private residences or farms, pastureland or gardens.

A private contractor hired by EPA estimated that there were 32,000 to 50,000 disposal sites scattered throughout the country, and that 1,200 to 2,000 of those might be extremely dangerous. The report predicted that 500 to 800 of those were either abandoned or owned by operators who could not afford to clean them up.

An EPA hazardous waste task force later began compiling a "hit list" of 4,598 dump sites to be investigated, a list that was growing by about 200 each month. Of those, about 8 percent were abandoned.

EPA also estimated that 90 percent of the waste currently being generated was being dumped in "an environmentally unsound manner." That included dumping at municipal landfills that did not meet EPA standards, and dumping in vacant lots, open pits and lagoons or in barrel-filled tractor-trailers left by the side of the road. Much of the improper disposal was blamed on infamous "midnight dumpers," who operated without permits.

The Chemical Manufacturers Association (CMA), which charged that EPA's figures were "significantly overdrawn," claimed there were 4,196 potentially hazardous dump sites and only 174 of them were abandoned.

EPA and the chemical industry also disagreed on the cost of cleaning up the problem.

EPA estimated that the cleanup effort could cost a staggering \$22 billion to \$44 billion. CMA estimated it would cost \$247 million to \$333 million to clean up the mess.

Inadequacy of Existing Law

Despite the enormity of the problem, EPA was forced to use a mishmash of existing laws to start cleaning up the most dangerous situations. It said the laws were inadequate to do the job. The statutes included:

- Section 311 of the Clean Water Act (PL 92-500), which provided money to clean up spills of oil and 297 toxic chemicals. But the money could be used only to clean up spills into navigable waters. It did not cover pollution of air, land or ground water. And it did not provide cleanup money for hazardous wastes that were not one of the 297 designated chemicals. (*Background, Congress and the Nation Vol. III, p. 792*)

The fund also was far too small to handle the huge hazardous waste problem. Only \$35 million could be appropriated each year, and that had to be shared with the Coast Guard's oil spill cleanup program.

- Section 504 of the same law. It authorized the government to spend up to \$10 million per year to clean up any hazardous substance causing any type of pollution. But no appropriations had ever been sought under that section, primarily because the law did not include any controls over how the money would be spent.

- Section 7003 of the Resource Conservation and Recovery Act (RCRA — PL 94-580). It allowed EPA to sue to require cleanup if an abandoned waste site was posing an "imminent and substantial" hazard to public health. But EPA had to prove in court that the hazard was significant, preventing emergency action. The law also did

not provide funds for cleanup of abandoned sites where the owner was unknown or when the owner could not afford the cleanup.

Major Issues

Among the issues Congress had to decide were: Who should pick up the cleanup tab — the taxpayers, the chemical companies or both? Should victims be compensated? What kind of substances should be covered by the bill? To what extent should the chemical companies be held liable?

What Is Covered?

House members and some administration officials complained that the Senate Environment Committee's original superfund bill was too broad. They said it was an attempt to draft landmark environmental legislation instead of simply providing emergency money to clean up chemical dumps.

Indeed, the original Environment Committee bill would have covered all hazardous substance leaks, spills or discharges from any vessel or facility. It would have closed any gaps in existing clean air and water laws by making companies liable for any toxic releases from their factories, non-consumer products, workplaces and waste sites.

The chemical industry strongly opposed such a broad-brush approach. CMA argued that the measure should cover only releases from dump sites where the owner could not be found or was unable to pay for cleanup.

But proponents of the Senate approach pointed out that existing laws had limitations. The Clean Air Act, for example, regulated only certain hazardous pollutants and regulations defining hazardous substances under the Clean Water Act were not yet final.

"The fact that the industry is worried about this shows that existing laws must not be cleaning up their discharges," said a Senate staffer.

Who Is Compensated?

Should the fund compensate victims or merely provide emergency cleanup money?

If the fund were to compensate victims, it would quickly go bankrupt, an EPA spokesman said.

The administration and CMA argued that victim compensation should be handled by private lawsuits against the responsible company. National health insurance, if passed, could handle long-term medical costs if the responsible company could not be found or was unable to pay, the administration said.

But environmentalists and some senators argued that making companies liable for victim compensation would prove a powerful non-regulatory incentive for proper waste handling.

Another argument for victim compensation was the inadequacy of many state laws, many of which required that suits be filed within one or two years from the time the exposure first occurred. Often victims were not aware that they had been exposed until many years later.

Who Pays?

Who should pay for the fund — industry, the taxpayers or both?

The chemical industry argued that because society benefited from inadequate disposal in the form of cheaper products, society should pay for the cleanup.

"Hazardous wastes are an integral by-product of our industrial society, and by-products of the daily life of every citizen," Jackson Browning, director of health, safety and environmental affairs for Union Carbide Corp., said.

Chemical firms also objected to across-the-board fees on the entire industry because it would force companies that disposed of wastes properly to pay for cleanup by careless firms.

But environmentalists argued that the polluter should pay for most of the cleanup because he benefited most from cheap disposal.

Marchant Wentworth, a hazardous waste specialist for Environmental Action, charged that requiring taxpayers to pick up the tab would amount to a "free janitorial service for industry."

Who is Liable?

One of the stickiest points — and one that industry fought the hardest — was a proposal in the original bills that would hold anyone generating or handling hazardous wastes "strictly, jointly and severally" liable for cleanup and damages caused by the wastes.

The concept of strict liability is rooted in common law. It would mean that anyone who created or handled hazardous substances — carefully or negligently — would be responsible for damages.

If enacted, the strict liability provisions would have allowed EPA or victims to recover damages or cleanup costs from chemical companies without first having to prove that they were negligent.

As passed, the final bill did not specify strict liability, but provided that a company would not be held liable if it could prove it was careful in packaging, labeling and handling the substance, and if it had tried to ensure that the transporter would properly dispose of the waste.

Justice Department officials opposed the provision, and warned that it would make it difficult for the government to recover cleanup costs. Evidence of lack of due care, particularly in cases involving abandoned waste sites, would be extremely difficult to obtain, said Justice officials.

The concept of "joint and several" liability would hold anyone along the hazardous waste chain — from the factory owner to the disposal site operator — equally responsible for cleanup or damages resulting from a spill or leak.

A victim or the government could sue anyone in the chain for damages without having to determine who was negligent, or who was most responsible for the spill or leak. After the victim or government was reimbursed, the companies involved could sue each other and have the courts determine who was the most negligent.

The provision would allow EPA to recover cleanup costs quickly to reimburse the superfund, instead of using its legal resources to determine whose chemical caused what damage, said the administration. That task would be especially difficult when several companies used the same site, when dumped chemicals reacted with each other to form an even more toxic substance, or when records were unavailable.

Industry representatives argued that their liability should end as soon as the wastes left their factories. They maintained they should not be held liable for the negligence of transporters or disposal site operators.

House Action

Because of restrictions on committee jurisdictions, the House superfund package was made up of two parts: a bill to clean up abandoned chemicals dumps (HR 7020) and a measure to clean up oil and chemicals spilled into navigable waterways (HR 85).

Together, the two bills that finally passed the House would have provided \$1.95 billion to clean up oil and chemical contamination, \$350 million more than the \$1.6 billion the president had requested. An EPA spokesman said the two bills provided "85 percent of what the administration had asked for" in other areas.

HR 7020

HR 7020 was reported by the Interstate and Foreign Commerce Committee May 16 and by the Ways and Means Committee June 20 (H Rept 1016, Parts I and II).

The bill approved by the Commerce Committee was a watered-down version of a measure approved April 30 by its Transportation and Commerce Subcommittee.

Before the Commerce Committee received the bill, it had been re-written and weakened twice by its sponsor, Subcommittee Chairman James J. Florio, D-N.J.

Florio had introduced a tougher version in 1979 (HR 5790), which had become mired in the subcommittee. It would have established a \$1.3 billion fund, with industry providing 75 percent of that and the taxpayers 25 percent.

But in order to appease opposition preventing the measure from getting out of the subcommittee, Florio substituted a new version (HR 7020) providing for a \$600 million fund, with half of it coming from industry and the rest from the taxpayers.

Then in order to get the subcommittee's measure past key members of the Commerce Committee, Florio said, he had to agree to even more compromises. A last-minute version was hammered out at a meeting that ended at 2 a.m. on the day before the Commerce Committee markup.

Florio's tactic apparently worked. The bill was ordered reported 21-3, and received the endorsement of both committee Republicans who had opposed it in subcommittee, and the Chemical Manufacturers Association.

While some committee members and the chemical industry appeared happy, environmentalists and several committee members bitterly charged that Florio had compromised more than he had to.

Florio's compromise departed in several ways from the subcommittee bill. First, it eliminated a controversial provision that allowed victims of hazardous dump sites to sue the responsible company in federal court for personal or property damages.

But the most controversial changes were those that resulted in a reduction in the amount that the chemical industry would eventually pay for chemical cleanup.

One of those provisions would tie the amount of the industry fee to whatever amount Congress eventually appropriated for the government's share of the fund.

Under that plan, if the government failed to appropriate its full 50 percent share of the fund in any one year, industry's share would be adjusted accordingly. Opponents said that it would make the fee susceptible to industry lobbying at the Office of Management and Budget and at the White House, where appropriation requests originate.

The bill also shifted the burden of the cleanup program away from industry by prohibiting EPA administrative and personnel costs from being paid by the fund. Those costs would have had to come from general revenues. Industry objected strenuously to its fees being used to pay the salaries of government employees who would be suing the companies for damages and cleanup costs.

Finally, the Florio substitute weakened the liability provisions of the bill. The original subcommittee version had required that when the government sued several companies for cleanup expenses at one site, the court should apportion damages according to the amount caused by each company. If one company was bankrupt, the solvent companies would have had to pay for that firm's damages.

But the substitute provided that no company should pay more than its apportioned share.

Amendments

The committee rejected the following strengthening amendments during markup:

- By Bob Eckhardt, D-Texas, to make companies liable for 20 years for damages caused by their chemical wastes produced after Jan. 1, 1980.

- By Albert Gore Jr., D-Tenn., to make it easier for EPA to sue a responsible company for cleanup costs and to allow victims to sue chemical companies in federal court.

- By Gore, to increase the fund to \$1.2 billion and change the federal share of the fund from 50 percent to only 25 percent.

- By Edward J. Markey, D-Mass., to increase the fund to \$1.3 billion.

The committee also rejected the following amendments, which would have further weakened the bill:

- By Phil Gramm, D-Texas, to allow a one-house congressional veto of EPA regulations implementing the program.

- By Dave Stockman, R-Mich., to restrict the dump sites EPA could clean up to those posing "a significant threat to human health."

The committee approved the following amendments:

- By Thomas A. Luken, D-Ohio, to require the government to develop federal worker safety standards to protect those who clean up hazardous wastes.

- By Luken, to require contractors hired to clean up toxic dump sites to pay workers the prevailing wage earned by similar workers in the area.

- By William E. Dannemeyer, R-Calif., to require the EPA to take competitive bids from private companies for disposing of chemical wastes removed from a leaking site.

- By Norman F. Lent, R-N.Y., to end automatically the cleanup program five years after the bill was enacted.

- By Lent, to require the EPA within three months to begin developing its priority list of the 100 most dangerous dump sites.

Ways and Means Action

The House Ways and Means Committee, which reported HR 7020 June 20, increased from \$600 million to \$1.2 billion the amount available in the fund. It also increased industry's share to 75 percent, reducing the government's share to 25 percent.

The amendment increasing industry's share, offered by Thomas J. Downey, D-N.Y., passed by a 21-14 vote. Another Downey amendment doubling the fund passed 20-15.

Floor Action

HR 7020, which had been expected to produce fiery controversy, received broad bipartisan support with only minimal floor debate when the measure reached the House floor Sept. 19.

HR 7020 passed 351-23 on Sept. 23. (Vote 510, p. 148-H)

Sponsors said the lack of opposition was due to constituent pressure and last-minute endorsements by the chemical and oil industries. Environmental and consumer groups charged that the House superfund bills were so weak that all opposition had been compromised away.

Others claimed no one wanted to go on record opposing superfund since it appeared slim at the time that Congress would clear a bill. Congress was expected to begin an election recess Oct. 2. Even with a lame duck-session, there would be little time to reconcile differences between the two House bills and a more comprehensive Senate measure pending at the time.

Stockman strongly opposed provisions in the bill giving EPA broad new emergency powers to relocate, contain or clean up releases or "threatened" releases of hazardous substances from abandoned chemical dumps. He introduced a substitute amendment giving most decision-making powers to state environmental agencies.

Admitting that he had "no illusions" that his amendment would pass, Stockman nonetheless argued that his proposal should be adopted to prevent creating in EPA "an additional regulatory monster with unlimited power to clean up any dump site in the country."

The amendment was defeated by voice vote after Rep. Edward R. Madigan, R-Ill., ranking minority subcommittee member, said it "would let the irresponsible dumpers in the country off the hook."

In another attempt to limit EPA's powers, Stockman offered an amendment to give Congress legislative veto power over any EPA regulation developed to implement the bill. It was rejected by voice vote.

Also defeated was a Dannemeyer amendment to delete authority for EPA cleanup action but provide \$40 million for four studies of the abandoned dump problem.

Other sections of the bill would hold companies liable for all cleanup costs resulting from the release of a hazardous waste, unless they could prove they had exercised due care or that the release was caused solely by a third party.

Those liability provisions were tightened up on the floor by two administration-favored amendments, both offered by Gore, which were approved by voice votes.

The first Gore amendment left it up to a court's discretion whether to apportion damages among the liable companies. The original measure made court apportionment mandatory.

The second Gore amendment prohibited a chemical company from claiming it wasn't liable for damages because the release was caused by another person's negligence, if that person was an employee or under contract to the company.

Other amendments adopted by voice vote were:

- By Eckhardt, to provide \$10 million for a study of diseases caused by hazardous wastes.

- By Eckhardt, to require dump site owners and operators to report the existence of all sites.

- By John D. Dingell, D-Mich., to allow EPA to consider two or more non-contiguous dumps as a single site for

the purposes of a national inventory, if the sites were geographically related or posed the same type of threat.

- By James C. Cleveland, R-N.H., to require that of the 100 top priority dump sites to be cleaned up by the fund, at least one should be located in each state, if practical.

- By Al Ullman, D-Ore., to exclude substances used as fuel from any industry tax imposed by the bill.

Provisions

In addition to the floor amendments, HR 7020, as passed by the House:

- Established a \$1.195 billion "Hazardous Waste Response Trust Fund," to pay for containing or cleaning up waste from inactive hazardous waste sites that caused or threatened to cause harm to the public health and environment.

- Provided the Treasury Department with authority to collect \$895 million — 75 percent of the fund — in excise taxes from the oil and chemical industries for the fund.

- Provided that of the \$895 million, \$540 million come from a \$2.54 per ton tax on certain primary petrochemicals; \$180 million come from a \$2.33 per ton tax on inorganic substances; and \$175 million come from a six-cents-per-barrel tax on crude oil.

- Prohibited collection of taxes for the fund or payments from the fund after Sept. 30, 1985.

- Provided that the federal government would appropriate \$300 million over five years for the fund, or 25 percent.

- Authorized \$35 million for EPA to prepare a national priority list of the 100 most dangerous inactive hazardous waste sites, ranked in order of the danger they presented.

- Authorized \$2 million for EPA to study ways to base the industry fees on the amount of wastes generated or disposed.

- Required monitoring of inactive sites that may pose a threat to the public health or environment.

- Allowed EPA to take emergency action to prevent or mitigate dangers from a leaking hazardous waste site, but only if the responsible company will not or cannot clean it up.

- Allowed EPA to contract in non-emergency situations for cleanup of sites that pose an unreasonable threat to the public if the responsible party will not or cannot act.

- Allowed EPA to enter into cooperative agreements to have states clean up sites within their borders if they could afford it.

- Required at least 10 percent of EPA's total cleanup costs to be paid by the state in which the dump site was located and required that states pay for long-term maintenance and provide adequate alternate disposal sites.

- Allowed EPA to sue the company responsible for a dump site to recover the government's cleanup expenses. A company would be held liable only for that portion of the costs that a court attributed to it.

- Allowed a company to defend itself in court on the grounds that it was not negligent and that the damages were caused by the act of a third party, provided the third party was not an employee or under a contract with the company.

- Required EPA to conduct a study of the issues and problems of finding adequate safe disposal sites.

- Required contractors hired to clean up toxic dump sites to pay workers the prevailing wage earned by similar workers in the area.

- Required EPA to take competitive bids from private companies for disposing of chemical wastes removed from a leaking site.

- Required the Treasury secretary by Jan. 1, 1985, in consultation with EPA, the Commerce Department and the Office of the United States Trade Representative, to submit a study to Congress on various aspects of the taxes imposed under the bill. The study would examine the feasibility of basing the taxes on the amount of hazardous wastes a company generated or disposed and on the degree of hazard posed by those wastes.

- Required the Treasury secretary to report to Congress each year on the financial condition of the fund.

- Allowed the Treasury secretary to invest portions of the fund that were not needed for current withdrawals.

- Required the government to develop federal worker safety standards to protect those who clean up hazardous wastes.

HR 85

HR 85 had been introduced by Mario Biaggi, D-N.Y., in 1979 and was reported by the Merchant Marine and Fisheries Committee May 15, 1979. That bill would have established a \$200 million fund to deal only with oil spills.

A year later, on May 16, the measure was reported by the Public Works and Transportation Committee. The Ways and Means Committee reported it June 20 (H Rept 96-172, Parts I, II and III).

Public Works Committee

The Public Works Committee bill set up two funds — totaling \$300 million — for emergency cleanup of oil and toxic chemicals spilled into navigable waters. A \$200 million fund dealt with oil spills, and a separate \$100 million fund was to be used to clean up chemicals.

The bill also set liability limits for oil and chemical companies and would allow compensation for victims who suffered economic losses from oil or chemical spills.

The committee also voted to allow a one-house congressional veto of any regulation carrying out the program.

The measure did not address the problem of abandoned chemical dump sites, because the committee had jurisdiction only over activities in navigable waterways.

Reps. John B. Breaux, D-La., and Gene Snyder, R-Ky., proposed a system for imposing fees on the chemical industry that was approved by the committee by voice vote.

Under the Breaux-Snyder approach:

- \$60 million of the \$100 million chemical cleanup fund would be provided by a fee on chemical "feedstocks," the organic and inorganic substances used to make chemicals.

- \$20 million would be supplied by those who manufactured the four most frequently spilled chemicals — benzene, toluene, xylene and styrene.

- \$20 million would be provided by those who manufactured 297 of the most hazardous chemicals.

The one-house congressional veto amendment was introduced by Don Albosta, D-Mich., who said the provision was needed to give Congress control over the way EPA carried out the program.

The committee also adopted an amendment, offered by William H. Harsha, R-Ohio, making owners of oil tank trucks liable for at least \$2 million in damages caused by oil spills from their vehicles. Tank truck owners also would have to carry liability insurance for at least \$2 mil-

lion per truck. The provision applied only to trucks capable of carrying at least 3,500 gallons of oil or petroleum products.

Ways and Means Committee

The Ways and Means Committee increased the cleanup fund from \$300 million to \$750 million over a five-year period.

The committee provided for two \$375 million funds — financed entirely by industry taxes — to deal with oil and chemicals spilled into navigable waterways.

On Aug. 21, two months after it had reported the bill, the Ways and Means Committee met with Biaggi to work out the differences between the committee's version of HR 85 and the measures reported earlier by the Public Works and Merchant Marine committees. The meeting was necessary in order to get a rule that suited all three committees and to present a united front to the Rules Committee.

At the meeting, changes were made in the Ways and Means Committee's amendment so that it:

- Exempted petrochemicals used as fuel from the excise tax.

- Allowed the fund to borrow up to \$75 million from the Treasury in the first year of the fund's operation to allow for collection of the excise taxes.

- Allowed compensation payments to continue from the fund after the five-year cutoff date for the fund.

- Limited compensation for fishermen (for lost income due to contaminated waters) to only two years' worth of lost income, if at least 25 percent of the claimant's income were derived from fishing. The amendment also allowed anyone, not just fishermen, to file claims against the fund for two years of lost income due to destruction of livelihoods, as long as at least 25 percent of their income came from the direct or indirect use of a natural resource that was destroyed by the oil or chemical spill.

During Rules Committee consideration Aug. 27, Breaux presented a substitute that incorporated the Ways and Means Committee's changes and the changes discussed at the Aug. 21 meeting. The committee then granted a rule for both HR 85 and HR 7020.

Floor Action

The House easily passed HR 85 Sept. 19 by a 288-11 vote, after Breaux offered a substitute to the Ways and Means committee version that limited industry's liability for cleanup costs and damages. (Vote 502, p. 146-H)

The oil and chemical industry dropped its opposition to the bill after that change was made.

Breaux's substitute included a minor word change that made companies liable for cleanup costs and economic damages only when a spill is of a quantity that EPA determined "may be harmful."

The amendment was designed to prevent victims from seeking reimbursement from the fund if only traces or insignificant amounts of a substance were spilled.

Floor debate centered on two amendments that would have made the bill retroactive to cover two recent oil and chemical accidents — one in Texas and one in Louisiana at the mouth of the Mississippi River.

Joe Wyatt Jr., D-Texas, offered an amendment to make up to \$75 million worth of damages to Texas coastal businesses resulting from the Mexican 1979 Campeche Bay oil spill eligible for reimbursement from the fund.

The amendment was killed, 43-264, after Biaggi argued that if the bill were opened up to cover retroactive spills it would set a precedent and there would be no end to the number of incidents members would want covered. (Vote 501, p. 146-H)

Members rejected a similar amendment offered by Robert L. Livingston, R-La., to cover cleanup costs and economic losses resulting from the July 22 spill of pentachlorophenol (PCP) in the Mississippi River.

The House did approve an amendment offered by Peter A. Peyser, D-N.Y., to allow up to \$10 million for removal of toxic pollutants already in place in navigable waterways. His amendment allowed, for instance, cleanup of the polychlorinated biphenyl (PCB) contamination in the Great Lakes and in the Hudson River. The provision had been in the original Public Works bill, but had been inadvertently deleted by Ways and Means.

Other amendments approved by voice vote were:

- By Biaggi, to clarify that the liability of an insurer of any facility affected by the bill was limited to the amount in its statement of financial responsibility.

- By Snyder, to reduce from \$2 million to \$1 million the minimum level of financial responsibility required for owners of oil tank trucks.

Provisions

As passed by the House, HR 85:

- Established a \$375 million trust fund over five years to clean up oil spilled into navigable waters and to compensate victims of such spills for certain damages.

- Established a \$375 million trust fund over five years to clean up hazardous wastes released into navigable waters and to compensate victims of such releases for certain damages.

- Required the funds to seek recovery of their expenses from the parties responsible for the pollution.

- Provided that the oil spill fund would be financed by an excise tax on crude oil of 1.3 cents per barrel.

- Provided that the hazardous waste fund would be financed by an excise tax on primary petrochemicals at \$1.18 per ton and an excise tax on certain inorganic substances at the rate of 31 cents per ton.

- Provided that the new funds would pre-empt other state or federal funds relating to oil and hazardous substance liability.

- Provided that, in addition to cleanup costs, both funds may pay claims for damages to property or natural resources and for lost income due to destruction of property or natural resources.

- Required that each fund maintain at least a \$30 million "cleanup reserve."

- Provided that claims unpaid due to the cleanup reserve requirement will be deferred until excise tax revenues became available to pay them.

- Allowed the funds to borrow up to \$75 million from the Treasury in the first year of operation.

- Allowed compensation payments to continue to be made from the funds after the five-year cutoff date.

- Allowed anyone to file claims for two years of income lost due to destruction of livelihoods, as long as at least 25 percent of their income came from the direct or indirect use of a natural resource that was destroyed by the oil or chemical spill.

- Established liability for vessel and facility owners and operators, setting limits on the amounts they would have to pay the fund for damages.

- Required owners and operators of vessels and offshore facilities to maintain specified amounts of financial responsibility.

- Mandated procedures for victims to bring claims against the owners and operators of polluting vessels or facilities prior to filing a claim against the fund.

- Provided that, except for spills caused by oil production facilities located on the outer continental shelf, money spent by owners and operators on pollution cleanup would be considered part of their total liability.

- Exempted owners or operators from liability if the pollution was caused by war or "exceptional, inevitable and irresistible" natural phenomenon; by the negligence of the claimant, or by the actions of a third party not employed or under contract to the owners or operators.

- Allowed states to impose stricter pollution standards on deepwater ports, or on vessels operating within any ship traffic control zone around a deepwater port.

- Provided that any EPA regulation implementing the bill should be subject to a one-house congressional veto.

- Provided that the U.S. Army Corps of Engineers, rather than the EPA, should have authority to determine whether an area was a wetland in issuing dredging permits in compliance with Section 404 of the Clean Water Act.

- Prohibited the funds from paying EPA administrative expenses.

- Specified that nothing in the bill authorized the federal government to control groundwaters.

Senate Action

The Senate Environment Committee July 11 reported a \$4.1 billion superfund bill (S 1480) for cleaning up all types of toxic chemicals in the environment, after voting to restrict the way victims of chemical disasters could be compensated for injuries and property damage. It was ordered reported 10-1 (S Rept 96-848), with Alan K. Simpson, R-Wyo., casting the dissenting vote.

Earlier, the panel had adopted, 11-0, an amendment by Pete V. Domenici, R-N.M., to restrict compensation of victims. Domenici's amendment brought the measure more in line with the Carter administration's proposal, which did not provide for victim compensation.

Domenici's compensation amendment would treat cases involving property and natural resource damages differently from cases seeking compensation for personal injuries and loss of income.

For property and natural resource damage cases, victims could sue the responsible company or be compensated from the superfund — but only if the damage occurred before the bill was enacted. If the damage started before enactment, but was continuing, as in New York's Love Canal area, victims also could sue or be compensated.

In personal injury or loss of income cases, victims could sue or seek compensation if the damage occurred after Jan. 1, 1977, or if the damage wasn't discovered until after that date. Victims of chemical dumps or accidents occurring before 1977 would have to rely on existing federal and state laws, which had been criticized for providing insufficient remedies in such cases.

The Domenici provision would only affect victim compensation cases. It would not affect the ability of the federal government to sue companies for cleanup costs.

Other thorny issues thrashed out by the committee during two weeks of markup dealt with the scope of the bill and its liability provisions.

One of the most significant changes was an amendment by Lloyd Bentsen, D-Texas, which cut down dramatically on the types of hazardous releases covered by the measure.

Before the Bentsen amendment was approved, the bill would have held companies liable for damages caused by any emission or release of a hazardous substance from their facilities — including releases of substances not specified as allowable by existing clean air and clean water laws.

In other words, even though a company had obtained a permit under the Clean Water Act allowing it to discharge certain wastes into a river, if other toxic substances were found later to be in those wastes, the company would be held liable for cleanup costs and damages to health or natural resources.

Industry representatives argued that the wide-ranging coverage would have brought U.S. industry to a near standstill, because companies could have been held liable for any release from their plants, including those already permitted by existing laws.

The Bentsen amendment exempted certain releases allowed under five existing environmental laws: the Clean Water Act, Clean Air Act, Safe Drinking Water Act, Resource Conservation and Recovery Act and Ocean Dumping Act.

Also approved was a Simpson amendment exempting releases allowed under the Atomic Energy Act.

In addition, the committee adopted a fee schedule that would raise a total of \$4.1 billion over six years, with \$3.6 billion coming from industry and \$510 million coming from the taxpayers.

The fees would be collected on 45 substances identified in the bill, based at first on amounts produced and adjusted later to reflect the number of incidences in which the fund had to clean up particular substances.

Initially, 65 percent of the industry fees would come from petrochemical manufacturers, 20 percent from those who produced inorganic compounds and 15 percent from crude oil producers.

During the first three years the fertilizer industry would not have to contribute to the fund, but collections from fertilizer producers could occur later if there were frequent fertilizer-related cleanup problems.

Another amendment, offered by Domenici, would reduce from \$25 million to \$1 million the amount of fees collected from the copper industry. For the first three years of the fund's operation, the fee would be imposed only on that portion of copper used to make the three end-products of copper that are toxic — copper sulfate, cupric oxide and cuprous oxide. After three years, the fee could be adjusted to cover more copper, if the fund were being tapped to clean up copper wastes.

A committee staffer pointed out that air emissions and solid wastes from all copper refining — not just the three compounds — contain arsenic. Arsenic was suspected of causing a high incidence of lung cancer in areas near copper refiners.

Another amendment, by John H. Chafee, R-R.I., allowed a judge apportioning liability when several chemical companies contributed to damages at a particular site to consider the amount and toxicity of the substance involved and the amount of cooperation the company exhibited in helping to clean up the release.

The committee also approved several other amendments, including the following:

• By Culver, to allow the superfund to pay claims for losses from releases that destroyed or devalued any livestock or agricultural products.

• By Mike Gravel, D-Alaska, similar to Culver's, to allow the fund to reimburse losses by fishermen.

• By Culver, to require federal and state regulations protecting workers involved in hazardous waste cleanup: to require federal and state agencies or their contractors to pay prevailing wages to cleanup crews, and to forbid employers from firing an employee who reported or testified regarding a hazardous substance release.

• By Quentin N. Burdick, D-N.D., to allow workers exposed to a hazardous substance in their workplaces — caused by a third party — to sue the third party but not the employer who was covered by workers' compensation.

• By Daniel Patrick Moynihan, D-N.Y., to allow the fund to compensate victims of hazardous chemical incidents for medical expenses incurred within six years from the date of discovery of the exposure.

• By Simpson, to exempt from liability any damages to natural resources where the responsible company had obtained a federal permit or had completed an environmental impact statement prior to operation.

Finance Committee

After the Environment Committee reported S 1480, the Finance Committee began lengthy negotiations to get jurisdiction over the measure because of the tax-imposing nature of the bill.

It finally was referred to the committee on Oct. 1, the day before Congress recessed for the Nov. 4 election. After the election, when it appeared that Stafford and Randolph wanted quick floor action on a scaled-down version of the measure during the lame-duck session, the panel reported it without recommendation Nov. 18.

The panel said it was reporting the bill without any changes in order to speed action.

Floor Action

In order to appease Republicans who had threatened to filibuster the Environment Committee's ambitious \$4.1 billion measure, the committee bill was cut back by about 75 percent in closed-door meetings before it ever got to the Senate floor.

A \$1.6 billion substitute was accepted Nov. 24, by a 78-9 vote. Final passage was by voice vote. (Vote 469, p. 68-S)

Four days earlier, the Senate had been slated to consider a \$2.7 billion substitute introduced by Stafford and Randolph when it appeared that the expensive committee bill was dead. But Howard H. Baker Jr., R-Tenn., objected to it being brought up and the measure was pulled from the floor.

After two days of closed-door negotiations, Stafford and Randolph offered an even more stripped-down substitute — the version that was finally enacted into law.

Stafford said that although the substitute was not all he wanted, it was all he could get through Congress this year.

"I am a realist," he said. "At this time and in this place, S 1480 cannot be enacted. But this final compromise can."

Stafford and Randolph had been forced to make major concessions. Perhaps the biggest, and the one that sparked the most debate, was the deletion from the committee

bill of a provision allowing the fund to compensate victims of chemical disasters for their medical expenses.

Initially, one-third of the fund was to be earmarked to compensate victims of chemical accidents. As cleared, only state or local governments could be compensated, and only for up to \$50 million in damages to natural resources, such as trees, lakes or parks.

The compromise also deleted a provision allowing victims to sue chemical companies in federal court. Victims would have to continue to seek redress in state courts using existing common law, a process that has been "agonizingly slow and inordinately expensive," said George J. Mitchell, D-Maine.

The final bill also contained weaker liability provisions than the committee measure and the original Carter proposal. When the compromise reached the floor, Jesse Helms, R-N.C., who led the Republican opposition to the measure, immediately moved to put a cap of \$1.38 billion on the amount of taxes that could be imposed on the chemical industry to finance the superfund. His amendment, which lowered industry's share of the fund from 87.5 percent to 86 percent, passed by voice vote.

Under an agreement proponents had made earlier with Helms to keep him from filibustering, both the Democratic and Republican leadership said they would oppose any other amendments.

The only sharp debate on the bill came from Mitchell, who believed too many concessions had been made. "This bill cannot honestly be called a substitute for S 1480," said Mitchell, adding that he would vote for it because it was a "meaningful first step" to solving the problem of poisons in the environment.

Mitchell's strongest objection was that injured persons would not be compensated for damaged health and lost income resulting from chemical pollution.

"This Senate has made the judgment that property is more significant than human beings," he said. "We are telling the people of this country that under our value system property is worth compensating, but a human life is not."

"Neither logic nor compassion, good government nor common sense compel this," he said. "It is simply a failure of will on the part of the Congress."

He vowed to introduce victim compensation legislation in the 97th Congress.

Helms, on the other hand, said the Senate had "gone a long way toward making a bad bill better" by cutting back the liability provisions and by reducing the fund from \$4.1 billion to \$1.6 billion. Despite the many concessions he had elicited, Helms voted against the bill because, he said, it still contained "bugs" he could not support.

Because S 1480 would impose new taxes on the chemical industry and revenue bills must originate in the House, the Senate substituted its language for the provisions of the House-passed HR 7020.

House-Senate Comparison

Besides the liability provision and the differences in the size of the funds, the House and Senate bills varied in several other ways.

The Senate bill required industry to provide 86 percent of a \$1.6 billion fund (\$1.38 billion), while the House's HR 7020 required industry to pay 75 percent of a \$1.2

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billion fund (\$900 million) and HR 85 required industry to pay 100 percent of two funds totaling \$750 million.

The Senate bill covered many more types of incidents than the House bills, but did not cover incidents involving oil. HR 7020 provided money to clean up only abandoned chemical dumps. HR 85 covered spills of oil and 299 specified chemicals but only if spilled into navigable waterways.

The Senate measure also covered a broader range of chemical "releases" — including any leaking, spilling, emitting or injecting into the environment of a hazardous substance — not just those that occurred at chemical dumps or into navigable waterways.

HR 85 provided for limited victim compensation.

The Senate bill provided for a one-house legislative veto of any regulations written to implement the superfund. That provision, added in the final stages of developing the compromise, was not in either House bill.

Some observers said the liability provisions in the final Senate bill were weaker than the liability provisions in the House bills, but others disputed that.

The House version of HR 7020 held polluting companies "strictly" liable for damages caused by their chemical wastes.

Under strict liability, those who produced or handled a hazardous substance — regardless of whether they were careful or negligent — would be responsible for damages if that substance were spilled.

The original Senate committee bill had called for strict liability, but the compromise did not. It called for the same liability imposed under the Clean Water Act (PL 92-500) for companies spilling hazardous substances into navigable waters. (*Clean Water law, Congress and the Nation Vol. III, p. 792*)

That Clean Water provision had generally been interpreted by the courts as meaning strict liability, although it said only that a person would be held liable for damages, without specifying strict liability. The clean water law also said individuals or companies would not be held liable if they could prove that an accident was caused by the action of a third party.

Final House Action

When the House returned from its Thanksgiving recess Dec. 1, Congress was slated to adjourn Dec. 5. Thus House proponents said they needed to act quickly to accept the Senate-passed bill without going to conference. As it turned out, Congress didn't actually adjourn until Dec. 16.

A coalition of members who had worked on the House superfund package was angry that the Senate had not covered oil spills and had delayed so long before adopting its bill.

Led by James T. Broyhill, R-N.C., they tried to prevent it from being passed under suspension of the rules, a procedure that precluded floor amendments. They wanted it amended to include oil and to correct technical errors.

But that would have doomed the bill, claimed James J. Florio, D-N.J. He said the Senate Democratic leadership had told him the controversial bill would not be called up if it were returned to that chamber, because a single senator could kill it by threatening a filibuster.

The Senate-passed HR 7020 was originally scheduled to be debated under suspension Dec. 2. But House Speaker Thomas P. O'Neill Jr., D-Mass., suddenly pulled it from

the schedule when it appeared opponents had enough votes to prevent it from passing under suspension.

Several meetings followed between Florio and the opponents, but Florio refused to offer an amendment adding oil spills and dealing with other deficiencies cited by the opponents.

He quoted a letter from Senate sponsors Stafford and Randolph warning that if the bill were returned to the Senate, it would die.

"Only the frailest, moment-to-moment coalition" had enabled the Senate to pass the bill, the letter said. That coalition disintegrated immediately and "it would now be impossible to pass the bill again, even unchanged," it added.

The "take-it-or-leave-it" tone of the Senate letter incensed some House members, particularly those on the Public Works and Merchant Marine committees that had reported HR 85, which covered oil and chemical spills. The Senate had incorporated the chemical portion of HR 85 into HR 7020, but dropped the oil portion.

House members were particularly angry because HR 85 was the second House-passed oil spill measure that the Senate had refused to act upon. In the 95th Congress, the House had twice passed an oil spill measure, but the Senate refused to pass it because it did not contain provisions for chemical spills. (*Background, 1978 Almanac p. 714*)

When the negotiations between Florio and the opponents failed, they took their disagreement to the floor, where the debate was heated and the final vote a cliffhanger.

Madigan, ranking Republican on the Transportation and Commerce Subcommittee, said, "We have been left with a take-it-or-leave-it situation, and I would like to recommend that we leave it."

Ray Roberts, D-Texas, chairman of the Public Works Committee's Water Resources panel, added, "Despite the fact that the White House has made 60 phone calls up here asking for help, it is a very, very bad way to legislate."

William H. Harsha, R-Ohio, was angry about the Senate's last-minute ultimatum. "Are we a co-equal branch of the legislative process, or patsies?" he asked.

But the proponents agreed with Florio that amending the bill would doom it, and any problems could be corrected later. "This is the proverbial bird in the hand," said Downey of New York.

"The people are not interested in technicalities," said James M. Jeffords, R-Vt. "They're interested in the serious problem of hazardous wastes. Let's help the people now and take care of the technicalities later."